APPEAL NO. 022333
FILED OCTOBER 28, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 15, 2002. The hearing officer determined that the respondent's (claimant) impairment rating (IR) is 23% pursuant to the Texas Workers' Compensation Commission (Commission)-appointed designated doctor's certification. The appellant (carrier) appealed, asserting that the designated doctor improperly applied the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides). The file does not contain a response from the claimant.

DECISION

We affirm.

The parties stipulated that the claimant sustained a compensable injury on _____; that on April 25, 2001, the claimant's referral doctor found the claimant to have a 12% IR; that the claimant reached maximum medical improvement on May 8, 2001; and that on May 8, 2001, the designated doctor found the claimant to have a 23% IR. The hearing officer determined that the great weight of the other medical evidence is not sufficient to contradict the designated doctor's 23% IR certification. The hearing officer found that the differences in medical opinions merely represent a bona fide difference of opinion among medical professionals.

The carrier first asserts that the designated doctor erred as a matter of law in awarding 7% for medically documented pain, spasm, or rigidity under Table 49 of the AMA Guides. The carrier argues that in order to receive a rating under Table 49, there must have been a minimum of "6 months" of medically documented pain, spasm, or rigidity. The carrier further argues that since the injury occurred on _____, and the designated doctor examined the claimant on May 8, 2001, a rating under Table 49 can not be given because less than 6 months had elapsed from the date of injury to the date of the designated doctor's examination. In response to a letter of clarification from the Commission, the designated doctor declined to remove his Table 49 rating and noted that the claimant had pain and muscle spasms in his lumbar spine during the examination.

It is well established that the designated doctor's report should not be rejected "absent a substantial basis to do so." Texas Workers' Compensation Commission Appeal No. 93039, decided March 1, 1993, and Texas Workers' Compensation Commission Appeal No. 962154, decided December 4, 1996. The burden of proof is on the party who seeks to overcome the designated doctor's report. We note that the examination was conducted 180 days after the date of injury. In the absence of proof that the reference to 6 months means 6 calendar months, or six months to the precise

day, we hold that the designated doctor's use of Table 49 was appropriate under the criteria therein stated.

Even if six calendar months were the standard, the designated doctor noted that the claimant had pain and spasms during the examination. The designated doctor can exercise his expert medical judgment and believe that the claimant's, pain will likely last for a few more days in order to give a rating under Table 49. Furthermore, there is an absence of evidence that the claimant's pain did not, in fact, continue for six months (and even thereafter) such that a great weight is present to overturn this IR.

Finally, the carrier asserts that the designated doctor's range of motion (ROM) measurements are invalid because he did not take into consideration measurements which were taken on April 25, 2001, during a Functional Capacity Evaluation (FCE). The carrier argues that the designated doctor's May 8, 2001, ROM results and those from the April 25, 2001, FCE, are so drastically different it was incumbent on the designated doctor to inquire into the cause for the discrepancy. The designated doctor noted that the claimant gave a valid try during his examination, and that there was no evidence of malingering or exaggeration. We note that the figures given in the FCE do not appear to be complete, and this makes comparison hard, but in any case the designated doctor invalidated lumbar flexion and extension, the figures that seem most divergent from the FCE insofar as a comparison can be made.

The hearing officer stated that the differences in opinions presented in this case were merely differences of opinion among medical professionals, and determined that the great weight of the other medical evidence is not sufficient to contradict the finding of 23% IR as determined by the designated doctor in May 8, 2001. This determination is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986).

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750
AUSTIN, TEXAS 78701.

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Michael B. McShane
Appeals Judge

_____
Margaret L. Turner
Appeals Judge